IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

WP(C).No. 5618 of 2007(R)

PETITIONER:

M/S. SRI LAKSHMI ELECTROMELTERS (P)LTD.,
182, INDUSTRIAL DEVELOPMENT AREA,
ERUMATHALA P.O., ALUVA, REPRESENTED BY
ITS GENERAL MANAGER.

BY ADV. SRI.P.K.M.HASSAN,
SRI.FIROZ K.ROBIN,
SRI.SOUJATH M.S.

RESPONDENTS:
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1. **THE STATE OF KERALA, REPRESENTED BY**
   ITS SECRETARY, TAXES DEPARTMENT,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. **THE SALES TAX OFFICER,**
   SALES TAX OFFICE, ALUVA, ERNAKULAM.

3. **THE DEPUTY COMMISSIONER (APPEALS),**
   DEPARTMENT OF COMMERCIAL TAXES, ERNAKULAM.

4. **THE DEPUTY TAHSILDAR (REVENUE),**
   REVENUE RECOVERY, ALUVA.

BY GOVT. PLEADE SRI. MOHAMMED RAFIQ.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/02/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.5618/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE PROCEEDINGS OF THE GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE, ERNAKULAM.

EXT.P.2: COPY OF THE PROCEEDINGS OF THE GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE, ERNAKULAM.

EXT.P.3: COPY OF THE NOTICE DTD. 01/03/2006 ISSUED BY THE R .2.

EXT.P.4: COPY OF THE REPLY FILED BY THE PETITIONER ON 09/03/2006.

EXT.P.5: COPY OF THE ASSESSMENT ORDER DTD. 21/03/2006 IN REGARD TO THE KGST ASSESSMENT FOR THE YEAR 2000-2001.

EXT.P.6: COPY OF THE ASSESSMENT ORDER DTD. 21/03/2006 IN REGARD TO CST ASSESSMENT FOR THE YEAR 2000-2001.

EXT.P.7: COPY OF THE APPEAL MEMORANDUM DTD. 26/06/2006 CHALLENGING KGST ASSESSMENT.

EXT.P.8: COPY OF THE APPEAL MEMORANDUM DTD. 26/06/2006 CHALLENGING CST ASSESSMENT.

EXT.P.9: COPY OF THE STAY PETITION.

EXT.P.10: COPY OF THE STAY PETITION.

EXT.P.11: COPY OF THE COMMON INTERIM ORDER DTD. 29/11/2006 IN STA NOS. 1517/06 AND 1518/06.

EXT.P.12: COPY OF THE JUDGMENT DTD. 11/08/2005 IN W.P.(C). NO. 6500/2004.

EXT.P.13: COPY OF THE REVENUE RECOVERY NOTICE DTD. 29/09/2006.

EXT.P.14: COPY OF THE JUDGMENT DTD. 20/12/2006 IN W.P. NO. 33905/06.

EXT.P.15: COPY OF THE ORDER DTD. 22/01/2007.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR,J.

WP(C)NO.5618 OF 2007-R

Judgment

The petitioner challenges Ext.P15 order, which is a detailed order, disposing of the petitioner's stay application filed along with Exts.P7 and P8 appeals challenging Exts.P5 and P6 assessment orders under the KGST and CST Acts. The petitioner being an SSI unit, is entitled to get exemption from payment of tax on the strength of Exts.P1 and P2 orders. But the said right has been denied to it on the ground that it has suppressed certain transactions which should have reflected in the books of accounts and the returns. The GO providing exemption has been modified by the Government subsequently, providing that those committing illegalities in the matter of accounting and filing of returns and thereby guilty of suppression of transactions, are ineligible to enjoy the benefit of exemption. If the petitioner admits the offence and compounds the same, the said bar may be got over. In this case, the petitioner tried to compound the offence alleged against him, but the same was not accepted by the assessing authority and therefore, it is not able to enjoy the benefit of exemption and has been held liable to pay the entire tax. Challenging the said finding of the assessing authority, the petitioner filed the appeals.

2. While disposing of the stay applications, the appellate authority felt that allowing the compounding claimed by the petitioner is a matter within the discretion of the assessing authority. Secondly, it was found that the petitioner is

not entitled to compound the matter on the facts of the case. Based on these findings, the interim order was passed, directing the petitioner to remit 50% of the amount which may come to more than Rs.12 lakhs. The petitioner attacks both the findings of the appellate authority and prays for an unconditional stay.

3. I heard the learned Government Pleader appearing for the respondents also. He fully supports the orders of the appellate authority. The finding of the appellate authority that the power to compound under Section 47 of the KGST Act is a matter within the discretion of the assessing authority, cannot be upheld. It is a power coupled with a duty. If an application is filed by a person interested for compounding and the circumstances warranting exercise of that power are shown to exist, the said power will become a power coupled with a duty which has to be exercised appropriately. See the concept of power coupled with a duty explained in the decisions of the Apex Court in ***Commissioner of Police v. Gordhandas Bhanji*** (AIR 1952 SC 16) and ***L.Hirday Narain v. Income Tax Officer*** (AIR 1971 SC 33).

4. It is also ordered that the finding of the appellate authority that the petitioner is not eligible for compounding the offence shall be treated as a prima facie finding. While disposing of the matter, the appellate authority shall take a decision on that point uninfluenced by the prima facie finding, taking into account, the contentions of the petitioner and the materials produced by it. If the petitioner's claim for compounding is upheld and it is found to be entitled to get exemption, no amount will be payable as tax for the relevant year as KGST and CST. Having regard to the facts of the case, if the petitioner pays Rs.2 lakhs and

furnishes security for the balance amount to the satisfaction of the assessing authority, further recovery pursuant to the impugned orders proposed under Ext.P13 will be kept in abeyance till the appeals are disposed of. The petitioner shall co-operate with the appellate authority for the early disposal of the appeals and the third respondent shall hear the appeals as expeditiously as possible.

The Writ Petition is disposed of as above.

21.02.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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